

1 FRANCIS M. GREGOREK (144785)

gregorek@whafh.com

2 BETSY C. MANIFOLD (182450)

manifold@whafh.com

3 RACHELE R. RICKERT (190634)

rickert@whafh.com

4 PATRICK H. MORAN (270881)

moran@whafh.com

5 WOLF HALDENSTEIN ADLER

6 FREEMAN & HERZ LLP

750 B Street, Suite 2770

7 San Diego, California 92101

Telephone: 619/239-4599

8 Facsimile: 619/234-4599

9 JOSEPH J. SIPRUT (*Pro Hac Vice* Application Forthcoming)

jsiprut@siprut.com

10 SIPRUT PC

11 122 South Michigan Ave.

Suite 1850

12 Chicago, IL 60603

13 Telephone: 312/588-1440

Facsimile: 312/427-1850

14 Attorneys for Plaintiff Troy Yuncker and the Putative Class  
15 in the *Yuncker* case, No. 11-CV-03113 DMR

17 UNITED STATES DISTRICT COURT  
18 NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

19 BEVERLY LEVINE, et al.,

20 Plaintiff,

21 vs.

22 GOOGLE, INC.,

23 Defendant.

Case No. 3:11-CV-02157-JSW

**OPPOSITION TO ADMINISTRATIVE  
MOTION TO CONSIDER WHETHER  
TO RELATE CASES UNDER L.R. 3-12**

1 On July 1, 2011, under Local Rule 3-12, Pandora Media, Inc. ("Pandora") filed an  
2 "Administrative Motion to Consider Whether To Relate Cases" pursuant to Civil Local Rule  
3 ("L.R.") 7-11 in this case. (N.D. Cal. L.R. 3-12(b)). After Pandora's administrative motion under  
4 L.R. 7-11 was electronically filed in this case on July 1, 2011, the motion was then *mailed* to  
5 plaintiff's counsel in *Yuncker v. Pandora Media, Inc.*, No. 11-CV-03113 DMR ("*Yuncker*"), on the  
6 eve of the long July 4th weekend. Pandora's administrative motion to relate cases fails to comply  
7 with L.R. 7-11 on several fronts and should be denied as procedurally improper. Moreover, in all  
8 events, the cases are not related within the meaning of L.R. 3-12.

9 First, Pandora's motion to relate "must be accompanied by a proposed order and by either a  
10 stipulation under Civil L.R. 7-12 or by a declaration that explains why a stipulation could not be  
11 obtained." L.R. 7-11(a). No declaration was provided because counsel for Pandora never  
12 contacted plaintiffs' counsel in the *Yuncker* case to discuss whether the *Levine* and *Yuncker* cases  
13 should be related. Second, under L.R. 7-11(a), "[t]he moving party must deliver the motion and all  
14 attachments to all other parties *on the same day as the motion is filed*" (emphasis added). Again,  
15 Pandora's counsel mailed the papers to plaintiffs' counsel on the day before a long holiday  
16 weekend, knowing that the deadlines under L.R. 7-11 are very short. See L.R. 7-11(b) (limits the  
17 opposition to five pages and it must be filed NO LATER THAN FOUR DAYS after the motion is  
18 filed.) Counsel in the *Yuncker* case did not receive the motion until July 5, 2011, the day that the  
19 opposition was due under L.R. 7-11. Also, under L.R. 5-5(b), the manner of service for cases  
20 subject to electronic filing is that the papers "must be electronically served." Electronic service  
21 would have given notice on July 1, 2011.

22  
23 Procedural deficiencies aside, none of the pending cases cited by Pandora (including the  
24 case before this Court, *Levine v. Google, Inc.*) are related to *Yuncker* within the meaning of L.R. 3-  
25 12. Pandora fails to mention that it is *not even a party* to any of the other four related cases. The  
26 plaintiffs in each of those cases sued Google (one of the four cases, *King v. Google, Inc.*, No. 3:11-  
27 cv-02167-JSW, also named two additional defendants) based on the allegation that the Android  
28 operating platform allows unauthorized access to the "unique device identifier" on class members'

1 mobile devices, which is then provided to application developers and used to build unauthorized  
2 user profiles.

3 The claims in *Yuncker* case are different. *Yuncker* does not challenge Google's practices or  
4 the ways in which the Android harvests user information; *Yuncker* takes those practices as a given.  
5 Instead, *Yuncker* challenges ***Pandora's*** practice of collecting the personal information of its users  
6 and then disseminating it to third-party advertising libraries, such as Google's AdMob.

7 While Pandora collects this information by way of some of the same mechanisms in the  
8 Android device highlighted in the *Levine* complaint, Pandora's culpability stems from its failure to  
9 explain to its customers how their information is truly used and collected. Pandora purports to  
10 obtain user consent for the collection of personal information, but that is a farce. Pandora does not  
11 explain – and consumers are unaware – that their personal information is used not for purposes of  
12 the Pandora application itself, *but rather for the transmission and commercialization of the*  
13 *information by way of third-party advertisers.*  
14

15 Pandora does not make this clear in its Privacy Policy and Terms and Conditions – and  
16 indeed, goes out of its way to obfuscate these facts. Put simply, this a Pandora problem, and it is  
17 within Pandora's control to fix this problem.

18 Pandora undoubtedly wishes to relate the *Yuncker* case into the *Levine* case so that the  
19 claims against Pandora will be lost in the mix of a myriad of parties and unrelated claims and be  
20 substantially delayed by the process. If Pandora's true motives are simply to avoid duplication of  
21 effort, that can (and should) be accomplished without formally relating the cases for all purposes.  
22 For example, to the extent there is *any* overlap of issues among the cases, Mr. Yuncker and his  
23 undersigned counsel will stipulate to coordinate discovery by whatever formal or informal means  
24 are necessary to avoid the unnecessary duplication of effort spanning across these unrelated cases.

25 //


26 //

Beyond any such stipulations or agreements for purposes of coordinated discovery, however, formally relating the cases is neither necessary nor desirable under L.R. 3-12.

Dated: July 5, 2011

Respectfully submitted,

WOLF HALDENSTEIN ADLER  
FREEMAN & HERZ LLP  
FRANCIS M. GREGOREK  
BETSY C. MANIFOLD  
RACHELE R. RICKERT  
PATRICK H. MORAN

  
BETSY C. MANIFOLD

750 B Street, Suite 2770  
San Diego, California 92101  
Telephone: 619/239-4599  
Facsimile: 619/234-4599  
gregorek@whafh.com  
manifold@whafh.com  
rickert@whafh.com  
moran@whafh.com

Liaison Counsel for Plaintiff and the Putative Class

SIPRUT PC  
JOSEPH J. SIPRUT  
122 South Michigan Ave.  
Suite 1850  
Chicago, IL 60603  
Telephone: 312/588-1440  
Facsimile: 312/427-1850  
jsiprut@siprut.com

Attorneys for Plaintiff and the Putative Class

PANDORA:18228